

Subsec. (b). Pub. L. 93-87 incorporated provisions of former subsec. (c), required the Secretary to include in the report such other information as he determines necessary, and deleted former subsec. (b) provisions which prohibited the Secretary from approving any standards and procedures unless they were in accordance with sections 105(b), 106(b), and 109(c) of this title.

Subsec. (c). Pub. L. 93-87 added subsec. (c). Former subsec. (c), which provided that subsecs. (a) and (b) should not be construed to relieve the Secretary of his obligation to make a final inspection of each project after construction and to require an adequate showing of the estimated cost of construction and the actual cost of construction, was incorporated in subsec. (b) of this section.

Subsecs. (d), (e). Pub. L. 93-87 added subsecs. (d) and (e).

#### EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-240 effective Dec. 18, 1991, and applicable to funds authorized to be appropriated or made available after Sept. 30, 1991, and, with certain exceptions, not applicable to funds appropriated or made available on or before Sept. 30, 1991, see section 1100 of Pub. L. 102-240, set out as a note under section 104 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 106, 112, 114 of this title.

### § 118. Availability of funds

(a) **DATE AVAILABLE FOR OBLIGATION.**—Except as otherwise specifically provided, authorizations from the Highway Trust Fund (other than the Mass Transit Account) to carry out this title shall be available for obligation on the date of their apportionment or allocation or on October 1 of the fiscal year for which they are authorized, whichever occurs first.

(b) **PERIOD OF AVAILABILITY; DISCRETIONARY PROJECTS.**—

(1) **INTERSTATE CONSTRUCTION FUNDS.**—Funds apportioned or allocated for Interstate construction in a State (other than Massachusetts) shall remain available for obligation in that State until the last day of the fiscal year in which they are apportioned or allocated. Sums not obligated by the last day of the fiscal year in which they are apportioned or allocated shall be allocated to other States, except Massachusetts, at the discretion of the Secretary. All sums apportioned or allocated on or after October 1, 1994, shall remain available in the State until expended. All sums apportioned or allocated to Massachusetts on or after October 1, 1989, shall remain available until expended.

(2) **OTHER FUNDS.**—Except as otherwise specifically provided, funds apportioned or allocated pursuant to this title (other than for Interstate construction) in a State shall remain available for obligation in that State for a period of 3 years after the last day of the fiscal year for which the funds are authorized. Any amounts so apportioned or allocated that remain unobligated at the end of that period shall lapse.

(c) **SET ASIDES FOR INTERSTATE DISCRETIONARY PROJECTS.**—

(1) **SET ASIDE FOR CONSTRUCTION PROJECTS.**—Before any apportionment is made under section 104(b)(5)(A) of this title for a fiscal year

beginning after September 30, 1992, the Secretary shall set aside \$100,000,000. Subject to section 149(d) of the Federal-Aid Highway Act of 1987, such amount shall be available only for obligation by the Secretary in accordance with subsection (b)(2) of this section.

(2) **SET ASIDE FOR 4R PROJECTS.**—

(A) **IN GENERAL.**—Before any apportionment is made under section 104(b)(1) of this title, the Secretary shall set aside \$54,000,000 for fiscal year 1992, \$64,000,000 for each<sup>1</sup> fiscal years 1993, 1994, 1995, and 1996, and \$65,000,000 for fiscal year 1997 for obligation by the Secretary for projects for resurfacing, restoring, rehabilitating, and reconstructing any route or portion thereof on the Interstate System (other than any highway designated as a part of the Interstate System under section 139 and any toll road on the Interstate System not subject to an agreement under section 119(e) of this title, as in effect on the day before the date of the enactment of the Intermodal Surface Transportation Efficiency Act of 1991). Of the amounts set aside under the preceding sentence, the Secretary shall obligate \$16,000,000 for fiscal year 1992 and \$17,000,000 for each of fiscal years 1993 and 1994 for improvements on the Kennedy Expressway in Chicago, Illinois. The remainder of such funds shall be made available by the Secretary to any State applying for such funds, if the Secretary determines that—

(i) the State has obligated or demonstrates that it will obligate in the fiscal year all of its apportionments under section 104(b)(1) other than an amount which, by itself, is insufficient to pay the Federal share of the cost of a project for resurfacing, restoring, rehabilitating, and reconstructing the Interstate System which has been submitted by the State to the Secretary for approval; and

(ii) the applicant is willing and able to (I) obligate the funds within 1 year of the date the funds are made available, (II) apply them to a ready-to-commence project, and (III) in the case of construction work, begin work within 90 days of obligation.

(B) **PRIORITY CONSIDERATION FOR CERTAIN PROJECTS.**—In selecting projects to fund under subparagraph (A), the Secretary shall give priority consideration to any project the cost of which exceeds \$10,000,000 on any high volume route in an urban area or a high truck-volume route in a rural area.

(C) **PERIOD OF AVAILABILITY OF DISCRETIONARY FUNDS.**—Sums made available pursuant to this paragraph shall remain available until expended.

(d) In addition to amounts otherwise available to carry out this section, an amount equal to the amount by which the unobligated apportionment for the Interstate System in any State is reduced under section 103(e)(4) of this title on account of the withdrawal of a route or portion thereof on the Interstate System, which withdrawal is approved after the date of enactment

<sup>1</sup> So in original. Probably should be "each of".

of this subsection, shall be available to the Secretary for obligation in accordance with subsection (b)(1) of this section.

(e) The total payments to any State shall not at any time during a current fiscal year exceed the total of all apportionments to such State in accordance with section 104 of this title for such fiscal year and all preceding fiscal years.

(f) Funds made available to the State of Alaska and the Commonwealth of Puerto Rico under this title may be expended for construction of access and development roads that will serve resource development, recreational, residential, commercial, industrial, or other like purposes.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 897; Pub. L. 89-574, § 7(a), Sept. 13, 1966, 80 Stat. 768; Pub. L. 94-280, title I, § 117(a), May 5, 1976, 90 Stat. 436; Pub. L. 95-599, title I, § 115(a), Nov. 6, 1978, 92 Stat. 2697; Pub. L. 96-106, § 5(a), Nov. 9, 1979, 93 Stat. 797; Pub. L. 97-424, title I, § 115, Jan. 6, 1983, 96 Stat. 2107; Pub. L. 100-17, title I, §§ 114(a)-(c), (e)(2)-(4), 115, Apr. 2, 1987, 101 Stat. 150-153; Pub. L. 102-240, title I, § 1020, Dec. 18, 1991, 105 Stat. 1948; Pub. L. 102-388, title IV, § 409, Oct. 6, 1992, 106 Stat. 1565.)

#### REFERENCES IN TEXT

Section 149(d) of the Federal-Aid Highway Act of 1987, referred to in subsec. (c)(1), is section 149(d) of Pub. L. 100-17, which is not classified to the Code.

The date of the enactment of the Intermodal Surface Transportation Efficiency Act of 1991, referred to in subsec. (c)(2)(A), is the date of enactment of Pub. L. 102-240, which was approved Dec. 18, 1991.

The date of the enactment of this subsection, referred to in subsec. (d), is the date of the enactment of Pub. L. 97-424, which was approved Jan. 6, 1983.

#### AMENDMENTS

1992—Subsec. (b)(1). Pub. L. 102-388 substituted “construction in a State (other than Massachusetts)” for “construction in a State” and “after October 1, 1989” for “before October 1, 1989”.

1991—Subsec. (a). Pub. L. 102-240, § 1020(a), added subsec. (a) and struck out former subsec. (a) which read as follows: “On and after the date that the Secretary has certified to each State highway department the sums apportioned to each Federal-aid system or part thereof pursuant to an authorization under this title, or under prior Acts, such sums shall be available for expenditure under the provisions of this title.”

Subsec. (b). Pub. L. 102-240, § 1020(a), added subsec. (b) and struck out former subsec. (b) which contained provisions relating to periods of availability of non-Interstate funds, Interstate construction funds, and funds for resurfacing, restoring, rehabilitating and reconstructing Interstate System, and provisions deeming obligation of funds as equivalent to expenditure and relating to effect of release of funds.

Subsec. (c)(1). Pub. L. 102-240, § 1020(b)(1), (2), substituted “1992” for “1983” and “\$100,000,000” for “\$300,000,000”.

Subsec. (c)(2). Pub. L. 102-240, § 1020(b)(3), added par. (2) and struck out former par. (2) which read as follows: “SET ASIDE FOR 4R PROJECTS.—Before any apportionment is made under section 104(b)(5)(B) of this title, the Secretary shall set aside \$200,000,000 for obligation by the Secretary in accordance with subsection (b)(3) of this section and subject to section 149(d) of the Federal-Aid Highway Act of 1987.”

Subsec. (d). Pub. L. 102-240, § 1020(c), substituted “(b)(1)” for “(b)(2)”.

Subsec. (f). Pub. L. 102-240, § 1020(d), struck out “on a Federal-aid system” after “roads”.

1987—Pub. L. 100-17, § 114(e)(2), substituted “Availability of funds” for “Availability of sums apportioned” in section catchline.

Subsec. (b). Pub. L. 100-17, § 114(e)(3)(A), inserted heading.

Subsec. (b)(1). Pub. L. 100-17, § 114(e)(3)(B), (D), inserted heading and aligned par. (1) with par. (2) as amended.

Subsec. (b)(2). Pub. L. 100-17, § 114(a), amended par. (2) generally, revising and restating as subpars. (A) to (F) provisions formerly contained in an undivided paragraph.

Subsec. (b)(3). Pub. L. 100-17, § 114(c), amended par. (3) generally, revising and restating as subpars. (A) to (D) provisions formerly contained in an undivided paragraph.

Subsec. (b)(4). Pub. L. 100-17, § 114(e)(3)(C), (D), inserted heading and aligned par. (4) with par. (2) as amended.

Subsec. (c). Pub. L. 100-17, § 114(b), (e)(4), inserted heading, designated existing provisions as par. (1), inserted par. (1) heading, substituted “Subject to section 149(d) of the Federal-Aid Highway Act of 1987, such amount” for “Such amount” in par. (1), added par. (2), and aligned par. (1) with par. (2).

Subsec. (f). Pub. L. 100-17, § 115, inserted “and the Commonwealth of Puerto Rico” after “the State of Alaska”.

1983—Subsec. (b). Pub. L. 97-424, § 115(a), designated existing provisions as pars. (1) through (4), in par. (2) as so designated, substituted “for projects on the Interstate System (other than projects for which sums are apportioned under section 104(b)(5)(B)) in accordance with the following priorities: First, for high cost projects which directly contribute to the completion of an Interstate segment which is not open to traffic; and second, for projects of high cost in relation to a State’s apportionment. Sums may only be made available under this paragraph in any State” for “to any other State applying for such funds for the Interstate System,” after “available by the Secretary”, struck out former cl. (1), which had required readiness to obligate funds within one year of the date the funds are made available, redesignated former cls. (2) and (3) as (A) and (B), respectively; and in par. (3) as so designated, struck out “and any amounts so apportioned remaining unexpended at the end of such period shall lapse” after “such sums are authorized”, inserted provision relating to the disposition of funds not obligated within the prescribed time period, and inserted further provision that sums made available under this paragraph shall remain available until expended.

Subsecs. (c) to (f). Pub. L. 97-424, § 115(b), added subsecs. (c) and (d) and redesignated former subsecs. (c) and (d) as (e) and (f), respectively.

1979—Subsec. (b). Pub. L. 96-106 substituted “shall continue to be available for expenditure in that State for a period of two years after the close of the fiscal year for which such sums are authorized and any amounts so apportioned remaining unexpended at the end of such period shall lapse” for “remaining unexpended at the end of the period of its availability shall lapse”.

1978—Subsec. (b). Pub. L. 95-599 substituted provisions relating to the availability of funds until the end of the fiscal year for provisions relating to the availability of funds until two years after the close of the fiscal year and substituted provisions establishing requirements for eligibility for funds for provisions calling for immediate reapportionment of unexpended funds.

1976—Subsec. (b). Pub. L. 94-280, in revising text, provided for a separate three year period of availability of sums apportioned to a Federal-aid system (other than the Interstate System), increased from the previously applicable two year period; continued the existing two year period for sums apportioned to the Interstate System; substituted provision for reapportionment of sums, apportioned to the States for the Interstate System under section 104(b)(4)(A), under section 104(b)(5)(A) of this title and for lapse of sums apportioned to the Interstate System under section 104(b)(4)(B) of this title for prior provision for reappor-

tionment of sums, apportioned to the States for the Interstate System under section 104(b)(4) and (5), under section 104(b)(5) of this title; and substituted provisions deeming there to be an expenditure of sums apportioned to a Federal-aid system if a sum equal to the total of the sums apportioned to the State for the fiscal year and previous fiscal years is obligated for prior provision deeming an expenditure to exist if a sum equal to the total of the sums apportioned to the States for the fiscal year and previous fiscal years is covered by formal project agreements providing for the expenditure of funds authorized by each Act which contains provisions authorizing the appropriation of funds for Federal-aid highways.

1966—Subsec. (d). Pub. L. 89-574 added subsec. (d).

#### EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-240 effective Dec. 18, 1991, and applicable to funds authorized to be appropriated or made available after Sept. 30, 1991, and, with certain exceptions, not applicable to funds appropriated or made available on or before Sept. 30, 1991, see section 1100 of Pub. L. 102-240, set out as a note under section 104 of this title.

#### EFFECTIVE DATE OF 1979 AMENDMENT

Section 5(b) of Pub. L. 96-106 provided that: "The amendment made by subsection (a) of this section [amending this section] shall apply to all amounts apportioned under section 104(b)(5)(B) of title 23, United States Code, for the fiscal year 1978 and for subsequent fiscal years."

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 104, 114, 127, 143, 157, 158, 159 of this title; title 40 section 818; title 40 App. section 201; title 49 section 31314.

### § 119. Interstate maintenance program

(a) The Secretary may approve projects for resurfacing, restoring and rehabilitating routes on the Interstate System designated under sections 103 and 139(c) of this title and routes on the Interstate System designated before the date of enactment of this sentence under section 139(a) and (b) of this title; except that the Secretary may only approve a project pursuant to this subsection on a toll road if such road is subject to a Secretarial agreement provided for in subsection (e). Sums authorized to be appropriated for this section shall be out of the Highway Trust Fund and shall be apportioned in accordance with section 104(b)(5)(B) of this title.

(b) Not later than one year after the date of issuance of initial guidelines under section 109(m) of this title each State shall have a program for the Interstate system<sup>1</sup> in accordance with such guidelines. Each State shall certify on January 1st of each year that it has such a program and the Interstate system<sup>1</sup> is maintained in accordance with that program. If a State fails to certify as required or if the Secretary determines a State is not adequately maintaining the Interstate system<sup>1</sup> in accordance with such program then the next apportionment of funds to such State for the Interstate system<sup>1</sup> shall be reduced by amounts equal to 10 per centum of the amount which would otherwise be apportioned to such State under section 104 of this title. If, within one year from the date the apportionment for a State is reduced under this subsection, the Secretary determines that such

State is maintaining the Interstate system<sup>1</sup> in accordance with the guidelines the apportionment of such State shall be increased by an amount equal to the reduction. If the Secretary does not make such a determination within such one year period the amount so withheld shall be reapportioned to all other eligible States.

(c) ELIGIBLE ACTIVITIES.—Activities authorized in subsection (a) may include the reconstruction of bridges, interchanges, and over crossings along existing Interstate routes, including the acquisition of right-of-way where necessary, but shall not include the construction of new travel lanes other than high occupancy vehicle lanes or auxiliary lanes.

(d) TRANSFER OF INTERSTATE CONSTRUCTION APPORTIONMENTS.—Upon application by a State (other than the State of Massachusetts) and approval by the Secretary, the Secretary may transfer to the apportionments to such State under section 104(b)(1) or 104(b)(5)(B) any amount of the funds apportioned to such State for any fiscal year under section 104(b)(5)(A) if such amount does not exceed the Federal share of the costs of construction of segments of the Interstate System open to traffic in such State (other than high occupancy vehicle lanes) included in the most recent interstate cost estimate. Upon transfer of such amount, the construction on which such amount is based on open-to-traffic segments of the Interstate System in such State as included in the latest interstate cost estimate shall be ineligible and shall not be included in future interstate cost estimates approved or adjusted under section 104(b)(5)(A).

(e) PREVENTIVE MAINTENANCE.—Preventive maintenance activities shall be eligible under this section when a State can demonstrate, through its pavement management system, that such activities are a cost-effective means of extending Interstate pavement life.

(f) TRANSFER OF FUNDS FOR SURFACE TRANSPORTATION PROGRAM PROJECTS.—

(1) UPON CERTIFICATION ACCEPTANCE.—If a State certifies to the Secretary that any part of the sums apportioned to the State under section 104(b)(5)(B) of this title are in excess of the needs of the State for resurfacing, restoring, or rehabilitating Interstate System routes and the State is adequately maintaining the Interstate System and the Secretary accepts such certification, the State may transfer such excess part to its apportionment under sections 104(b)(1) and 104(b)(3).

(2) UNCONDITIONAL.—Notwithstanding paragraph (1), a State may transfer to its apportionment under sections 104(b)(1) and 104(b)(3) of this title—

(A) in fiscal year 1987, an amount not to exceed 20 percent of the funds apportioned to the State under section 104(b)(5)(B) which are not obligated at the time of the transfer; and

(B) in any fiscal year thereafter, an amount not to exceed 20 percent of the funds apportioned to the State under section 104(b)(5)(B) for such fiscal year.

(g) LIMITATION ON NEW CAPACITY.—Notwithstanding any other provision of this title, the portion of the cost of any project undertaken

<sup>1</sup> So in original. Probably should be capitalized.